

**Letter of Findings: 01-20140505
Indiana Individual Income Tax
For The Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUES

I. Indiana Individual Income Tax - Indiana Income.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-4-8; [45 IAC 3.1-1-25](#); IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Miller Brewing v. Indiana Dept. of State Revenue, 903 N.E. 2d 64 (Ind. 2009).

Taxpayers protest the proposed assessment for the 2012 tax year, claiming that they properly reported the amount of their income that was subject to the Indiana income tax.

II. Tax Administration - Underpayment Penalty and Negligence Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the underpayment penalty and the negligence penalty.

STATEMENT OF FACTS

Taxpayers (also referred to as "Husband" and/or "Wife") are individuals with a current Florida address. Taxpayers also own real property and tangible personal property, including several automobiles, in Indiana. Husband incorporated an Indiana company in 1999. The company was eventually acquired by a multinational company and became a subsidiary of that multinational company. Husband continued to work for the company as the president of that subsidiary located in Indiana ("Indiana Employer"), whose official filings to the Indiana Secretary of State listed Husband as the president - residing in his Indiana residence - until June 2013. The records of the Indiana Department of Revenue ("Department") also show that Husband during this time continues to serve as the president (a responsible officer) of the Indiana Employer.

In late 2013, Taxpayers filed their married-filing-jointly Indiana income tax return, IT-40 PNR, for the 2012 year ("Return at Issue"), claiming a refund of \$2,543. Taxpayers' filing included a W-2 issued by the Indiana Employer, which withheld Indiana State Income Tax, in the amount of \$2,542.99. The Department reviewed the return as filed and adjusted the Return at Issue. The Department reclassified the W-2 income as Indiana income and allowed a \$1,000 deduction (Schedule C), a \$1,268 exemption (Schedule D), and a \$2,543 credit (Schedule F) based on the information stated in the box 17 of the Indiana Employer's W-2. The Department's adjustment resulted in a deficiency of Taxpayers' 2012 Indiana income tax. As a result, the Department denied the refund and assessed Taxpayers additional income tax, interest, negligence penalty, and underpayment penalty.

Taxpayers timely protested the assessments. An administrative phone hearing was held, during which Taxpayers' representatives explained the basis for the protest. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Indiana Income.

DISCUSSION

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Also, as to the matter of tax assessments, "each assessment and each tax year stands alone." Miller Brewing v. Indiana Dept. of State Revenue, 903 N.E. 2d 64, 69 (Ind. 2009) (referencing Glass Wholesalers v. Ind. Bd. of Tax Comm'rs, 568 N.E.2d 1116, 1124 (Ind. Tax Ct.1991)). This Letter of Findings addresses Taxpayers' protest of the Department's proposed assessments for the 2012 tax year only. Therefore, Taxpayers' arguments and supporting documents will be discussed and considered in this protest only to the extent they are relevant to the 2012 year.

Taxpayers, in this instance, filed the Return at Issue, claiming that they are entitled to a refund of \$2,543. The Return at Issue stated that Taxpayers' Indiana income was \$1,000 for the 2012 tax year. Taxpayers claimed that the W-2 income at issue was not Indiana income because they are Florida residents, and Husband provided his "business advice" to the Indiana Employer from their residence in Florida.

However, upon review the Department determined that Taxpayers erred in reporting their 2012 income. Thus, the Department reclassified Husband's W-2 income as Indiana income that was subject to Indiana income tax. As explained in detail below, this Letter of Findings finds: (1) that whether Taxpayers were Florida residents during 2012 is irrelevant and (2) all publically available information and the verifiable documents provided by Taxpayers demonstrate that Husband worked for the Indiana Employer in Indiana during some portion of the 2012 tax year. Therefore, the Husband's 2012 income from (paid by) the Indiana Employer was income derived from sources within Indiana, which was subject to Indiana income tax.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) (as in effect for the tax year 2012), which outlines income derived from Indiana source income, in relevant part, states:

With regard to . . . nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) **compensation for labor or services rendered within this state**; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section. (**Emphasis added**).

[45 IAC 3.1-1-25](#), in relevant part, further provides that "[a]ll persons who are not residents of Indiana are required **to report** that portion of their entire **income directly or constructively from or attributable to business, activities or any other source within Indiana**. . . ." (**Emphasis added**). A taxpayer must submit proof "of having indicated his bona fide intention to reside permanently elsewhere before the last day of the taxable year" to qualify as a nonresident. Id.

In this case, Taxpayers claimed that Husband's W-2 income was not subject to Indiana income tax because they are Florida residents. Taxpayers further asserted that their Indiana income for 2012 was only \$1,000, which was a winning (gain) from a purchase of the Indiana Hoosier Lottery. Taxpayers further contended that they were entitled to the \$2,543 refund.

Throughout the protest, Taxpayers offered copies of various depositions of witnesses taken for another matter pending before the Indiana Tax Court. Taxpayers stated that, Husband sold his business in 2006. Taxpayers further maintained that they subsequently decided to move and to live in Florida. Nonetheless, Husband continued to provide "business advice" to the Indiana Employer.

Taxpayers further stated that, in mid 2011, after one executive member of the Indiana Employer died unexpectedly, Husband returned to work in Indiana. Taxpayers asserted that, several months after Husband returned to Indiana, the Indiana Employer chose a new replacement as its president. Taxpayers stated that Husband was physically present in the Indiana Employer's office "in 2012 was for a kick-off meeting on the first business day of 2012 to announce the hiring and transition of the duties" to a new president. Taxpayers maintained that Husband only spent a few hours in Indiana to perform the required services. Taxpayers thus maintained that Husband's "several hundred thousand dollars" of W-2 income was not subject to Indiana income tax because he was not required to be physically present at the Indiana Employer's office in Indiana. Rather, Husband provided his "business advice" to Indiana Employer over the phone from their Florida residence. To support their protest, in addition to Husband's W-2s from previous years, Taxpayers submitted documents which include copies of their Florida Real Estate Property Tax Bills for 2011 and 2012, their Florida Driver Licenses, a Golf Membership Certificate of a Florida Golf & Country Club, W-2G Forms for 2012, and documents showing that they removed the homestead credits on their Indiana residence in February 2013.

Upon reviewing Taxpayers' supporting documentation, however, Taxpayers are mistaken. First, Taxpayers have reported the \$1,000 lottery winning in their Return at Issue. The Department only adjusted and reclassified Husband's W-2 income as Indiana income for the 2012 tax year. Thus, the issue here is whether Husband's W-2 income paid by (or from) an Indiana company (namely, the Indiana Employer) during the 2012 tax year was Indiana source income and thus was subject to Indiana income tax pursuant to IC § 6-3-2-2(a)(4). Based on the adjustments made by the Department, Taxpayers' residence (or domicile) during 2012 is irrelevant and beyond the scope of this protest.

Second, all publicly verifiable information, such as the Indiana Employer's official filings with the Indiana Secretary of State, listed Husband - residing at his Indiana residence - as its president until June 2013. The publicly verifiable information and Taxpayers' documentation together demonstrated that Husband continued working, as the president, for the Indiana Employer after December 31, 2011, through and including December 31, 2012. Specifically, there is no dispute that Husband was in Indiana and he was at the Indiana Employer's office to perform his duties as the president of the Indiana Employer in early 2012. Taxpayers' supporting documentation also showed that they stayed in Indiana and lived at their Indiana residence for some time in 2012, during which Taxpayers purchased an Indiana Hoosier Lottery ticket and Wife claimed the \$1,000 winning in October 2012. Taxpayers provided no verifiable documents to support the assertion that Husband simply offered his "business advice" to the Indiana Employer over the phone from their Florida home during 2012. Rather, Taxpayers' supporting documentation demonstrated otherwise.

Finally, according to its own business records, the Indiana Employer who continued working with Husband throughout 2012, acknowledged its withholding reasonability and withheld Indiana income tax on Husband's W-2 compensation. The Indiana Employer subsequently issued the W-2 to Husband and recorded the "State Income Tax" in box 17 of the W-2 pursuant to IC § 6-3-4-8, because Husband, as the president of the Indiana Employer, worked for and performed his duties in Indiana and received compensation from the Indiana Employer, during the 2012 tax year.

Therefore, based on the information available and/or presented, given the totality of the circumstances, in the absence of other verifiable documentation, in addition to Wife's \$1,000 lottery winning, the Department reasonably concluded that Husband's W-2 income paid by the Indiana Employer for 2012 was Indiana source income and was subject to Indiana income tax pursuant to above referenced Indiana law and regulations.

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration - Underpayment Penalty and Negligence Penalty.

DISCUSSION

As mentioned earlier, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486

Taxpayers protested the imposition of the underpayment penalty and negligence penalty.

A. Negligence Penalty

Taxpayers protested the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayers claimed that, based on the advice of a tax professional, Husband's W-2 income for the 2012 year was not Indiana source income and thus was not subject to the Indiana income tax. Thus, Taxpayers asserted that the negligence penalty should be abated. However, Taxpayers voluntarily entered into the principal-agent relationship and employed the tax professional to advise and file their tax returns. Thus, Taxpayers, as the principal, remain responsible. Also, Taxpayers were aware that the nature of the income paid by the Indiana Employer was subject to Indiana income tax. Since Taxpayers did not provide sufficient documentation to demonstrate that their failure was not due to negligence, the Department is not able to abate the negligence penalty.

B. Underpayment Penalty

The Department imposed an underpayment penalty because Taxpayers failed to timely remit sufficient amount of their estimated payments of adjusted gross income tax under IC § 6-3-4-4.1(b).

IC § 6-3-4-4.1, in relevant part, states:

(a) Any individual required by the Internal Revenue Code . . . to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the Internal Revenue Code. However, the following apply to estimated tax returns filed and payments made under this subsection:

(1) In applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by [IC 6-3-3](#).

. . .

(b) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by [IC 6-8.1-10-2.1\(b\)](#).

In this case, the Department notes that, in Husband's W-2, the Indiana Employer has withheld a reasonable amount of the Indiana income tax for the 2012 tax year. Therefore, the Department agrees that this underpayment penalty is not appropriate and should be abated.

FINDING

Taxpayers' protest of the negligence penalty, Issue II.A., is respectfully denied. Taxpayers' protest of the underpayment penalty, Issue II.B., is sustained.

SUMMARY

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessment for the 2012 tax year, Issue I, is denied.

As to Issue II, Taxpayers' protest of the underpayment penalty is sustained. Taxpayers' protest of the negligence penalty, however, is respectfully denied.

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